



OHIO COASTAL RESOURCE MANAGEMENT PROJECT

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December 19, 2002

To: Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel
for Ocean Services, National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, Room 6111, Silver Spring, MD 20910

Re: Barnes Nursery Appeal with the Secretary of Commerce (Federal Register, Oct. 23, 2002)

The Ohio Coastal Resource Management Project (OCRMP), a nonprofit citizens organization, urges the Secretary of Commerce to uphold the Ohio Department of Natural Resources' objections to consistency certification by the U.S. Army Corps of Engineers for this project, for the following reasons:

1. Ohio's Coastal Management Program was approved by the Secretary of Commerce in May 1997 so is clearly consistent with the objectives of the federal Coastal Zone Management Act.
2. Mr. Barnes had the 1900' long channel and berm constructed in the middle of a high quality coastal wetland in June 2000, without a proper Corps permit or an Ohio EPA Sec. 401 Water Quality Certification. Ohio has enforceable authority for Section 401 Water Quality Certification under the Ohio Revised Code, Section 6111.03 (Attachment 1). Barnes activity is clearly not consistent with Ohio's coastal program or with the objectives of CZMA.
3. Adverse effects to this Category 3 wetland (highest quality) can be clearly seen since this was an after-the-fact application. The clay soil from the berm has been eroding onto the Sheldon Marsh State Nature Preserve for more than 2 years, damaging wildlife and aquatic life habitat. The channel was dewatering the adjacent Sheldon Marsh during this very hot and dry summer.
4. No reasonable alternative is available as long as the channel and berm remain so close to the edge of Sheldon Marsh and continue to damage it. The channel and berm must be completely restored before any alternative is considered, such as an upland pipeline, farther from the State Nature Preserve boundaries.
5. Ohio's Lake Erie coastal marshes are designated by Ohio's coastal program as Special Management Areas, one of the most valuable portions of the entire Lake Erie ecosystem (Attachment 2). They serve as nesting and resting places for neotropical migratory birds. Protection and restoration of these wetlands--also very important to waterfowl--is being addressed under the North American Waterfowl Management Plan. Ohio's Coastal Program has also designated these coastal marshes as Coastal Resources of National Significance. Sheldon Marsh was designated as part of the federal Coastal Barrier Resource System as an otherwise-protected area in 1992.

In conclusion, OCRMP strongly urges the Secretary of Commerce to dismiss this appeal on the grounds that Mr. Barnes has failed to meet the burden of proof by not providing evidence that this channel and berm system is consistent with the objectives of the CZMA. The project benefits only one local private business by providing irrigation water to his nursery. However, this channel and berm are damaging an area of significant national interest. OCRMP objects to Barnes' failure to restore the damage to the coastal wetlands complex he bisected and the dedicated State Nature Preserve it borders. He has also refused to pursue alternative water supplies, such as an upland pipeline, which should be away from this coastal marsh.

Thank you for this opportunity to submit comments. A hard copy of these comments with attachments is being mailed today.

Edith Chase

Edith Chase
President



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6. The director may "issue, modify, or revoke orders to prevent, control, or abate water pollution" by requiring the construction of new disposal systems or modifying existing ones pursuant to O.R.C. § 6111.03(H)(2). This refers to all sewage system and waste treatment works including all pipes, conduits, etc. used to conduct or collect a waterborne sewage or other waste to a point of disposal or treatment. Further, the director may modify terms or conditions of a permit consistent with the CWA to require the maximum use of technology furthering the elimination of wastes into waters of the state (O.R.C. § 6111.031).

B. Injection Well Drilling Regulation

Ohio EPA administers a program established under O.R.C. § 6111.043 and 6111.044 to regulate the injection of wastes into waters of the state. When the director reviews permits under the program, the director must find before issuing a permit that the activity will comply with the CWA, the "Safe Drinking Water Act" and the State Clean Water Act (O.R.C. § 6111). Unless otherwise authorized by the director, "no person shall drill a new well or convert an existing well for the purpose of injecting sewage, industrial wastes, or other wastes, without having obtained an injection well drilling permit issued by the director of environmental protection" (O.R.C. § 6111.043 and O.A.C. Chapter 3745-34).

C. Section 401 Water Quality Certification

Any activity that requires a federal permit pursuant to Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899, or any other federal permit or license for an activity that may result in any discharge into navigable waters, must be consistent with the state's water quality standards (O.R.C. § 6111.03). Rules that, in part, set forth criteria for Section 401 Water Quality Certification are contained in O.A.C. Chapter 3745-32 (See Appendix K for the entire text.) Policy 12 further describes OCMP policy on regulation of activities affecting wetlands through the 401 process.

D. Regulation of Solid Waste Disposal Facilities

Ohio EPA has established uniform regulations throughout the state governing solid waste disposal sites and facilities and requires issuance of licenses from local boards of health for disposal sites (O.R.C. §§ 3734.02 and 3734.05). Detailed plans for such sites, facilities and methods of operation must be approved by the Director of Ohio EPA prior to issuance of any permit (O.R.C. § 3734.02). See Policy 31 for further details.

E. Regulation of Phosphorus-containing Detergent

Within the State Water Quality Management Plan, Ohio EPA has developed the Ohio Phosphorus Reduction Strategy for Lake Erie to quantify phosphorus loadings into Lake Erie from Ohio, and to identify those mechanisms that, if properly implemented, would reduce such loadings. Pursuant to the strategy, Ohio prohibits the sale and distribution for sale of household laundry detergents containing more than 0.5 percent by weight of phosphorus in all Ohio counties in the Lake Erie watershed (O.R.C. § 6111.10).



Pursuant to O.R.C. § 1506.05, the Director of ODNR has prepared an inventory and evaluation of public access facilities, and makes policy recommendations for enhancing public access to Lake Erie.

Wetlands – (See Policy 12.) Approximately 33,000 acres of wetlands along the Ohio shore form one of the most valuable portions of the entire Lake Erie ecosystem. This valuable state resource provides extremely important habitat for fish, game and waterfowl. Tremendous economic benefits result from the hunting and fishing of this wildlife. Wetlands also lessen the damaging effects of flooding by holding back floodwaters, and along lakeshores by absorbing wave energy. Their water filtering and purification abilities improve overall water quality.

Ohio's coastal wetlands have been severely depleted due to extreme development pressures. The generic APC categorization of wetlands provides for the recognition that all wetlands are worthy of protection or mitigative measures prior to any change in their current use. High priority uses for wetlands are those that preserve and restore natural attributes and serve natural preservation, wildlife habitat, hunting, floodwater retention, groundwater recharge, scientific research and environmental education functions. Any other uses are of lower priority.

The state has authority to acquire and manage wetlands through the DNAP for state nature preserves (O.R.C. Chapter 1517) and through the DOW for state wildlife areas (O.R.C. § 1531.06). ODNR staff will actively seek additional matching funds for wetland protection efforts and will continue to inventory and survey wetland areas. Additionally, Ohio's Capital Improvements budget for fiscal years 1989 and 1990 created the Ohio Wetlands Fund and targeted \$400,000 specifically for the purchase of wetlands.

Ohio EPA protects the water quality of Lake Erie wetlands through the exercise of its Section 401 Water Quality Certification authority in accordance with O.A.C. Chapter 3745-32.

Ohio EPA and ODNR are working on several wetlands initiatives, cooperatively and independently. Ohio EPA, under a State Wetlands Program Development grant from U.S. EPA, coordinated the development of a State Comprehensive Wetlands Strategy in close coordination with ODNR, other state agencies, county, local, and regional governments, and with significant input from the private sector and agencies such as the U.S. Fish and Wildlife Service and U.S. Department of Agriculture. ODNR, DOW, has inventoried coastal wetlands, working in cooperation with the Division of Real Estate and Land Management and U.S. Soil Conservation Service. Wetland inventory maps will be available at county Soil and Water Conservation District offices.

Protection and restoration of wetlands important to waterfowl is being addressed under the North American Waterfowl Management Plan (NAWMP). Lake Erie coastal marshes are within a high-priority focus area of the plan. DOW is cooperating with the U.S. Fish and Wildlife Service, private landowners and independent organizations such as Ducks Unlimited to acquire, protect and restore critical wetland habitat.

Coastal Resources of National Significance

Section 306(d)(13) of the CZMA provides that a state coastal management program must provide for "(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and (B) specific and enforceable standards to protect such resources."

As indicated in the bibliography below, the State of Ohio has inventoried and mapped the following coastal resources of national significance: coastal wetlands, reefs, beaches and dunes, barrier islands, and fish and wildlife habitat. Lake Erie's estuarine systems have been described in a NOAA publication, *Lake Erie Estuarine Systems: Issues, Resources, Status, and Management* (1989). Wetlands and critical fish habitat areas have been designated as generic APCs. State nature preserves and wildlife areas, several of which contain significant fish and wildlife habitat as well as barrier sand beaches and dunes, are designated as generic APCs. Six stretches of undeveloped coastal barriers have been designated units in the Coastal Barrier Resources System (CBRS), which prohibits federal flood insurance and financial assistance for development. Ohio has added five additional areas to the CBRS, including several low-lying seasonal dunes, (at Sheldon Marsh, Old Woman Creek, Kelleys Island North Pond, Mentor Marsh/Headland Dunes and Arcola Creek) for inclusion as otherwise-protected areas in the CBRS. These areas are owned and managed as nature preserves or state parks by the State of Ohio and The Nature Conservancy (Arcola Creek).

Enforceable standards regarding these resources are detailed in Policies 1, 2, 12, 13, 14, 16, 27 and 29. As described earlier in this chapter, the SMA nomination and designation process is an ongoing one intended to provide additional protection and special management as new areas and/or concerns regarding these resources become apparent.

Wetlands

National Wetlands Inventory. U.S. Department of the Interior.

State of Ohio Wetlands Inventory. Ohio Department of Natural Resources, Division of Wildlife.

The wetlands inventory is conducted using satellite imagery. Additional information, such as topographic maps, soil surveys and field surveys are used to assist in the location, description and classification of wetlands. This is an ongoing inventory. Ohio has completed the inventory of probable wetland sites and is in the process of printing hard-copy maps for public distribution. Maps for the nine coastal area counties are available in final form.

Coastal Erosion and Flood Hazard Areas

Lake Erie Shore Erosion and Flooding, Reports of Investigation (Lucas, Lake, Erie and Sandusky counties), 1976, 1978 and 1980. Ohio Department of Natural Resources, Division